

**BEFORE THE ARKANSAS SECURITIES COMMISSIONER**

**Case No. S-08-029  
Order No. S-08-029-09-CD01**

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ARKANSAS SECURITIES DEPT.

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**IN THE MATTER OF  
DAWN TAYLOR POWELL and  
POWELL & DREES, INC.**

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**CEASE AND DESIST ORDER**

On June 8, 2009, the Staff of the Arkansas Securities Department ("Staff") filed its Request for Cease and Desist Order ("Request"), stating that it has information and evidence that indicates Dawn Taylor Powell and Powell & Drees, Inc., violated provisions of the Arkansas Securities Act ("Act"), codified at Ark. Code Ann. §§ 23-42-101 through 23-42-509. The Arkansas Securities Commissioner ("Commissioner") has reviewed the Request, and based upon representations made therein, finds that:

**FINDINGS OF FACT**

1. The Staff's Request contains the following representations of fact:
  - a. Dawn Taylor Powell is a licensed insurance agent and a resident of Maumelle, Arkansas.
  - b. Powell & Drees, Inc. ("P&D"), is an Arkansas for-profit corporation formed as Powell Matlock Drees, Inc., on May 31, 2007. A name change was registered with the Arkansas Secretary of State on June 27, 2008, to the present name. It is registered with the Arkansas Insurance Department as an agency connected to Powell. Powell does business using the P&D name. Its address is 10825 Financial Centre Parkway, Suite 131, Little Rock, Arkansas 72211.
  - c. P&D was at all times discussed herein engaged in selling insurance products to the general public, relying heavily on free lunch and dinner seminars it hosted several times weekly.

- d. AR1 and AR2 are a retired couple who attended a P&D free dinner seminar in August 2007. After the dinner, they each went to Powell's office for individual appointments. At these appointments Powell learned the extent of AR1's and AR2's assets and financial condition.
- (i) Among AR2's assets were an Ameritrade account containing securities worth approximately \$7,000 and an RMK Morgan Keegan account containing securities worth approximately \$33,000. On August 29, 2007, Powell recommended that AR2 purchase an equity indexed annuity ("EIA") for approximately \$52,000, funding the purchase by liquidating the Ameritrade account, the RMK Morgan Keegan account, and a variable annuity AR2 owned. Powell filled out forms for AR2's signature entitled "Authorization to Transfer Funds," which ordered the securities in the Ameritrade and RMK Morgan Keegan accounts liquidated and the funds sent to the insurance company issuing the EIA. The liquidation of these securities accounts was accomplished and the purchase of the EIA was completed. The EIA was delivered to AR2 on October 16, 2007. Powell received a commission for the sale of the EIA.
- (ii) Among AR1's assets were an Ameritrade account containing securities worth approximately \$6,000 and a DWS Scudder account containing securities worth approximately \$10,000. On August 29, 2007, Powell recommended that AR1 purchase an EIA for approximately \$28,000, funding the purchase by liquidating the Ameritrade account, the DWS

Scudder account, and a variable annuity AR1 owned. Powell filled out forms for AR1's signature entitled "Authorization to Transfer Funds," which ordered the securities in the Ameritrade and DWS Scudder accounts liquidated and the funds sent to the insurance company issuing the EIA. The liquidation of these securities accounts was accomplished and the purchase of the EIA was completed. The EIA was delivered to AR1 on October 16, 2007. Powell received a commission for the sale of the EIA.

(iii) Among other assets owned by AR1 were two Ameritrade accounts, one an IRA holding Walmart stock and the other a non-IRA account holding other securities. Powell recommended that AR1 hold these accounts and not liquidate them.

e. AR3 is a retired person who attended a P&D free dinner seminar. After the dinner AR3 went to P&D's office for individual appointments with Powell, at which Powell learned of AR3's assets and financial condition. Among AR3's assets was a Sterne Agee account holding securities worth approximately \$105,000. On November 20, 2007, Powell recommended that AR3 purchase an EIA for approximately \$100,000, funding the purchase by liquidating the Sterne Agee account. Powell filled out forms for AR3's signature entitled "Authorization to Transfer Funds," which ordered the securities in the Sterne Agee account liquidated and had the funds sent to the insurance company issuing the EIA. The liquidation of the securities account was accomplished and the purchase of the EIA was completed. The EIA was delivered to AR1 on January 11, 2008. Powell received

a commission for the sale of the EIA.

- f. AR4 is a retired person who attended a P&D free dinner seminar. After the dinner AR4 went to P&D's office for individual appointments with Powell, at which Powell learned of AR4's assets and financial condition. Among AR4's assets was an Edward Jones account holding securities worth approximately \$40,000. On September 7, 2007, Powell recommended that AR4 purchase an EIA for approximately \$55,000, partially funding the purchase by liquidating the Edward Jones account. Powell filled out an application for the EIA and a transfer form, which ordered the securities in the Edward Jones account liquidated and the funds sent to the insurance company issuing the EIA. The liquidation of the securities account was accomplished and the purchase of the EIA was completed. The EIA was delivered to AR4 on October 17, 2007. Powell received a commission for the sale of the EIA.
- g. AR5 and AR6 are an Arkansas couple who attended a P&D free lunch or dinner seminar in October 2007. AR5 is retired and disabled, but AR6 is still working and hoping to retire in the foreseeable future. After the seminar, they each went to Powell's office for individual appointments. At these appointments Powell learned the extent of AR5's and AR6's assets and financial condition.
  - (i) Among AR5's assets was a BlackRock account containing securities worth approximately \$18,000. On December 17, 2007, Powell recommended that AR5 purchase an EIA for approximately \$18,000, funding the purchase by liquidating the BlackRock account. Powell filled out forms for AR2's

signature entitled "Authorization to Transfer Funds," which ordered the securities in the BlackRock account liquidated and the funds sent to the insurance company issuing the EIA. The liquidation of the securities account was accomplished and the purchase of the EIA was completed. The EIA was delivered to AR5 on January 29, 2008. Powell received a commission for the sale of the EIA.

- (ii) Among AR6's assets was a BlackRock account containing securities worth approximately \$25,000. On December 17, 2007, Powell recommended that AR6 purchase an EIA for approximately \$105,000, funding the purchase by liquidating the BlackRock account and a variable annuity AR6 owned. Powell filled out forms for AR6's signature entitled "Authorization to Transfer Funds," which ordered the securities in the BlackRock account liquidated and the funds sent to the insurance company issuing the EIA. The liquidation of the securities account was accomplished and the purchase of the EIA was completed. The EIA was delivered to AR6 on January 29, 2008. Powell received a commission for the sale of the EIA.

- h. Neither Powell nor P&D is or was at any time discussed herein registered in any capacity with the Arkansas Securities Department ("Department") in accordance with the Act.

### **CONCLUSIONS OF LAW**

- 2. An investment adviser is a person who engages in the business of advising others,

directly or indirectly, as to the value of securities or the advisability of investing in, purchasing or selling securities, for compensation. Ark. Code Ann. § 23-42-102(8). Powell, acting as an agent of P&D, advised AR1 through AR6 as to whether each investor should liquidate or retain securities. As a result of advising AR1 through AR6 to sell securities, the Respondents received commissions from the sale of EIAs purchased with the proceeds of liquidated securities. Rather than merely recommending the purchase of EIAs to AR1 through AR6, Respondents provided advice to AR1 through AR6 on securities matters and received compensation for the securities advice so given

3. It is unlawful to transact business as an investment adviser or representative of an investment adviser without first being registered with the Department. Ark. Code Ann. § 23-42-301(c). P&D is not registered as an investment adviser, and Powell is not registered as a representative of an investment adviser. Accordingly, the Respondents have violated the provisions of Ark. Code Ann. § 23-42-301(c).

4. Whenever it appears that any person has engaged or is about to engage in any act or practice in violation of the Act, the Commissioner may summarily order the person to cease and desist from the prohibited action. Ark. Code Ann. § 23-42-209(a)(1)(A). In view of the seriousness of the violations, the recurrent nature of the violations, the opportunity to commit future violations, the degree of harm to the investors resulting from the violations, the remedial function to be serviced by this Cease and Desist Order, and the Findings of Fact and Conclusions of Law, this Cease and Order is in the public interest and is appropriate.

### **ORDER**

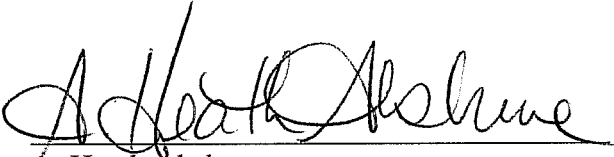
5. Dawn Taylor Powell and Powell & Drees, Inc., shall immediately cease and desist

from providing advice as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, in violation of Ark. Code Ann. § 23-42-301, until they are properly qualified and registered to provide such securities advice for compensation in accordance with the Arkansas Securities Act.

6. A hearing on this Cease and Desist Order shall be held if requested by the Respondent(s) in writing within thirty days of the date of the entry of this Cease and Desist Order. Ark. Code Ann. § 23-42-209(a)(2)(A). Such request should be addressed to the Commissioner and submitted to the following address:

Arkansas Securities Commissioner  
201 East Markham, Suite 300  
Little Rock, Arkansas 72201

7. If no hearing is requested and none is ordered by the Commissioner, this Cease and Desist Order will remain in effect until it is modified or vacated by the Commissioner. Ark. Code Ann. § 23-42-209(a)(2)(B).

  
A. Heath Abshire  
Arkansas Securities Commissioner

Date: September 22, 2009